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3:01-CV-02031 SAFETY SYRINGES INC V. BECTON DICKINSON

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BY: *lm. Umansky* DEPUTY

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SAFETY SYRINGES INC., a Delaware corporation, } Civil No: 01CV2031-B(JMA)  
v. } 02CV0229-B(JMA)

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BECTON, DICKINSON AND COMPANY, a New Jersey Corporation, }

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SAFETY SYRINGES, INC., a Delaware corporation, } Civil No: 03CV1376-B(JMA)

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v. AVENTIS PHARMACEUTICALS, INC., a Delaware corporation, }

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ORDER CONTINUING  
SUMMARY JUDGMENT  
HEARING AND SETTING  
MARKMAN HEARING

1           On November 6, 2003, the Court conducted a telephonic status conference in Safety  
 2 Syringes v. Becton Dickinson ("the Becton Dickinson cases"), 01CV2031 and 02CV0229,  
 3 and in Safety Syringes v. Aventis Pharmaceuticals, ("the Aventis case"), 03CV1376.  
 4 Appearng were Hope Melville, Esq. on behalf of Plaintiff Safety Syringes, Bill McElwain,  
 5 Esq. representing Defendant Becton Dickinson (01CV2031 and 02CV0229) and Bob  
 6 Neuner, Esq. representing Defendant Aventis Pharmaceuticals (03CV1376).

7           The principal issue before the Court regards the claims construction of U.S. Patent  
 8 No. 6,344,032 ("the '032 patent), which is the subject of the Becton Dickinson cases and  
 9 the Aventis case. Plaintiff filed two separate suits against Becton Dickinson, alleging  
 10 patent infringement. Cases 01CV2031 and 02CV0229, were filed on November 6, 2001  
 11 and February 6, 2002, respectively; the Court ordered the two cases consolidated on  
 12 February 20, 2002. On February 14, 2003, the Court conducted a claims construction  
 13 hearing regarding the '032 patent in the Becton Dickinson cases. The Court issued its  
 14 Claims Construction Order for the '032 patent in the Becton Dickinson cases on March 7,  
 15 2003.

16           On June 11, 2003, Plaintiff Safety Syringes filed a separate suit against Defendant  
 17 Aventis Pharmaceuticals, also alleging infringement of the '032 patent. Pursuant to Civil  
 18 Local Rule 40.1(e), the Aventis case was low numbered to the Becton Dickinson cases.<sup>1</sup>  
 19 To date, the Court has not conducted a claims construction hearing and the parties have not  
 20 had an opportunity to present arguments regarding claims construction of the '032 patent in  
 21 the Aventis case because of the timing of the filing of this case.

22           In construing the claims of a given patent, public policy demands that courts  
 23 construe disputed claim terms consistently and uniformly when the same patent is the

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24           <sup>1</sup>Pursuant to Civil Local Rule 40.1(d), a case may be low numbered if "any one or more civil  
 25 actions or proceedings pending or any one or more currently filed appear . . . (3) [to] involve the same  
 26 patent or the same trademark . . . or, (5) for other reasons would entail substantial duplication of labor  
 27 if heard by different judges." Civ. Loc. R. 40.1(d). Because the Becton Dickinson and the Aventis  
 cases involve allegations of infringement of the '032 patent, the Aventis case was low numbered to this  
 Court, which was already presiding over the Becton Dickinson cases.

1 subject of several lawsuits. See Markman v. Westview ("Markman II"), 517 U.S. 370, 391  
 2 (1996) (stating that part of the rationale advanced for allocating all issues of claims  
 3 construction to the court is to help ensure "uniformity in the treatment of a given patent").  
 4 As discussed above, both the Becton Dickinson cases and the Aventis case center around  
 5 alleged infringement of the '032 patent owned by Plaintiff Safety Syringes. Under the  
 6 applicable public policy concerns, this Court must uniformly and consistently construe the  
 7 claims terms of the '032 patent. However, Defendant Aventis Pharmaceuticals has not been  
 8 given its legal right to be heard regarding construction of any disputed claims of the '032  
 9 patent. Accordingly, pursuant to the issues discussed at the November 6, 2003 conference,  
 10 the Court **HEREBY ORDERS**:

11       1. The Court will conduct a claims construction hearing pursuant to Markman v.  
 12 Westview ("Markman I"), 52 F.3d 967 (Fed. Cir. 1995), for the '032 patent in the above  
 13 titled cases on January 21 - 22, 2004.<sup>2</sup> The Claims Construction Order resulting from this  
 14 Markman hearing shall supersede any previous Claims Construction Order regarding the  
 15 '032 patent and be binding on the Becton Dickinson cases and the Aventis case.

16       2. In preparation for the Markman hearing, the Parties shall submit a joint  
 17 spreadsheet on or before December 22, 2003, with the following: (1) a column containing  
 18 the verbatim claims language of all disputed claim terms; (2) a column containing the  
 19 parties' agreed upon claim construction, if any, for a given claim term; (3) columns  
 20 containing each party's proposed claim construction for disputed claim terms; and (4) a  
 21 column for the Court to write in the claim construction it determines to be correct for each  
 22 claim term.

23       3. Each party shall submit a brief in support of its proposed claim construction

26       2The claims construction hearing scheduled for January 21-22, 2004 will be the second claims  
 27 construction hearing for the '032 patent conducted in the Becton Dickinson cases.

1 language on or before January 5, 2003.<sup>3</sup> Each party's respective brief is  
2 limited to twelve pages in length, excluding exhibits and declarations.

3 4. The summary judgment hearing date in the Becton Dickinson cases (01CV2031  
4 and 02CV0229), currently set for January 20, 2004, is **CONTINUED** to March 1, 2004 at  
5 10:30 a.m. With respect to any motions for summary judgment, the parties shall file  
6 summary judgment briefs on or before February 2, 2004. Oppositions to the motions for  
7 summary judgment shall be filed on or before February 9, 2004. Replies in support of  
8 motions for summary judgment shall be filed on or before February 17, 2004.<sup>4</sup>

9 5. If they so choose, the parties in the Aventis case (03CV1376) may file motions  
10 for summary judgment, if any, in accordance with the schedule set forth for motions for  
11 summary judgment to be heard in the Becton Dickinson cases. See ¶ 4, supra.

12 **IT IS SO ORDERED**

13 Dated: 11-10-03



HON. RUDI M. BREWSTER  
United States District Judge

16 cc: Hon. Jan M. Adler  
17 United States Magistrate Judge

18 All Counsel of Record

25 <sup>3</sup>The parties should submit a courtesy copy of the briefs due on or before January 5, 2003  
26 directly with the undersigned's chambers.

27 <sup>4</sup>The parties should submit a courtesy copy of all briefs filed regarding motions for summary  
judgment directly with the undersigned's chambers.